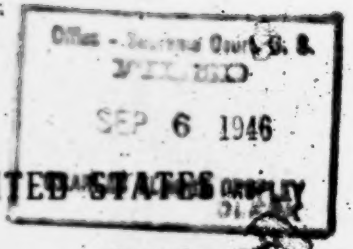
192

FILE COPY



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

749458
Sup Ct

No. 467

AYRSHIRE COLLIERIES CORPORATION, ET AL., AND CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Appellants,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF INDIANA

STATEMENT AS TO JURISDICTION

EARL B. WILKINSON,
ARTHUR R. HALL,
J. ALFRED MORAN,
CARSON L. TAYLOR,
WILLIAM L. HUNTER,
Counsel for Appellants.

INDEX

Subject Index

	Page
Statement as to jurisdiction	1
Statutes	2
Decree	2
Nature of the case and rulings below	2
Cases sustaining jurisdiction	7
Grounds upon which it is contended questions involved are substantial	7
Appendix—Findings of fact and conclusions of law	9

Table of Cases Cited

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557	7
Youngstown Sheet & Tube Co. v. *United States*, 295 U. S. 476	7
Western Paper Makers Chemical Co. v. *United States*, 271 U. S. 268	7
United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499	7

Statutes Cited

Commerce Court Act, Sec. 5 (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a)	2
Interstate Commerce Act, Sec. 15(7) 28 U. S. C. A. 15(7)	3, 7
Judicial Code, Sec. 238 as amended	2
Urgent Deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Sec. 45 and 47a, Suppl. III)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 467

No. 1072, Civil

AYRSHIRE COLLIERIES CORPORATION, A CORPORATION, ET AL.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,

Intervening Defendants.

No. 1076, Civil

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant;

INTERSTATE COMMERCE COMMISSION, ET AL.,

Intervening Defendants.

STATEMENT AS TO JURISDICTION ON APPEAL

In compliance with Rule 12 of the Rules of the Supreme Court, appellants submit herewith their statement showing

the basis of the jurisdiction of the Supreme Court of the above entitled case on appeal.

Statutes

Section 5 of the Commerce Court Act (c. 309, 36 Stat. 539; U. S. Code, Suppl. III, Tit. 28, Sec. 45a).

Section 238 of the Judicial Code as amended by the Act of February 13, 1925 (c. 229, 43 Stat. 936, 938, par. (4); U. S. Code, Tit. 28, Sec. 345).

Urgent deficiencies Act of October 22, 1913 (c. 32, 38 Stat. 210, 219; U. S. Code, Tit. 28, Secs. 45 and 47a, suppl. III).

Decree

The decree sought to be reviewed was entered June 5th, 1946.

The petition for appeal was filed on July 30, 1946, and the order allowing the appeal was entered August 1, 1946.

The Nature of the Case and Rulings Below

This suit in cause No. 1072 was brought by the Ayrshire Collieries Corporation and twenty-three other corporations and individuals operating coal mines in the state of Indiana, and the Coal Trade Association whose members are the other plaintiffs and other operators of coal mines in Indiana, and suit in cause No. 1076 was brought by Chicago, Milwaukee, St. Paul & Pacific Railroad Company, both suits seeking to enjoin, set aside and annul an order of the Interstate Commerce Commission, made and entered July 9th, 1945, in a proceeding then pending before said Commission entitled "I. & S. Docket No. 5139, Coal to Beloit, Wis., and Northern Illinois" reported 363 I. C. C. 179; the effective date of said order having been extended to July 23, 1946, by order of the Commission entered from time to time.

This proceeding before the Commission was instituted by it upon protest filed by the Coal Trade Association of Indiana, on behalf of its members, requesting the suspension of and an investigation by the Commission of the lawfulness of, certain schedules of new increased rates on coal filed by all carriers serving coal mines in Indiana, including the Chicago, Milwaukee, St. Paul & Pacific Railroad, from such mines to Rockford, Illinois, and numerous other destinations in northern Illinois, and by all of said carriers other than the Southern Railroad and the Chicago, Milwaukee, St. Paul and Pacific Railroad (hereinafter referred to as the Milwaukee) via its single line from mines served by it in Indiana to Beloit, Wisconsin. Said schedules of new rates were published to become effective on or about August 2, 1942. The new rates to Rockford were 15¢ per ton higher than the then existing rates, the new rates to other destinations were higher than the existing rates by amounts ranging up to 15¢ per ton. The new rates of each carrier to a destination in Illinois were increased the same amount per ton as the rates of all other carriers to the same destination from all origin points in Indiana. Twelve typical destinations are shown in Appendix A to the Commission's report of July 9, 1945.

The carriers serving mines in Illinois also filed schedules of new interstate rates from such mines to Rockford and other destinations in northern Illinois, increasing the existing rates generally but not uniformly by the same amounts per ton as the new rates from Indiana mines were increased, but not increasing the rates to Beloit and reducing the rates to some of the destinations in northern Illinois.

The Commission, acting upon the aforesaid protest in the exercise of its power under Section 15(7) of the Interstate Commerce Act (28 U. S. C. A. 15(7)), entered upon a hearing concerning the lawfulness of the rates, charges, regulations and practices stated in said schedules, and sus-

pended the operation of said schedules of new rates until March 2, 1943. Such suspension was extended until final decision by the Commission by agreement of the carriers.

The carriers serving mines in Illinois also filed schedules of new intrastate rates with the Illinois Commerce Commission, which new rates, generally, but not uniformly, increased the existing rates the same amount to the same destination as the proposed rates from Indiana were increased to such destination; in a few instances the new intrastate rates were lower than the existing intrastate rates. The Illinois Commerce Commission suspended the new intrastate rates and entered upon a hearing as to their lawfulness.

Thereafter in response to the petition filed with it by carriers serving mines in Illinois alleging that the intrastate rates on coal from mines in Illinois to Rockford and other destinations in northern Illinois unduly preferred intrastate shippers and receivers of coal, and unduly prejudiced interstate shippers and receivers of coal, and unduly discriminated against interstate commerce in coal in violation of Section 13 of the Interstate Commerce Act, the Commission entered upon an investigation concerning the lawfulness of the intrastate rates on coal in Illinois. Said investigation so instituted by the Commission was entitled "Docket No. 28881 Bituminous Coal Rates within Illinois."

A hearing was had before the Commission of both I. & S. Docket No. 5139 and Docket No. 28881 upon a common record, and on July 9, 1945, the Commission issued its report covering both proceedings, and entered its order in I. & S. Docket 5139, finding that the proposed rates were not justified, and requiring the respondent carriers to cancel the proposed new rates, but without prejudice to establishment of rates on the basis approved in said report, and further ordering the respondent carriers according as they partici-

pated in the transportation to cease and desist from practicing the unjust discrimination under Section 2 of the Interstate Commerce Act and the undue prejudice, and preference under Section 3(1) of said Act found in said report to exist and to publish, maintain and apply rates and charges which will avoid and remove said unjust discrimination and undue prejudice and preference.

The Commission in its report made certain findings of fact, and on the basis thereof concluded that the present and proposed rates from Indiana to northern Illinois destinations enumerated in Appendix E to the report result or would result in unjust discrimination as between shippers and receivers of coal transported in whole or in part by the Milwaukee or Illinois Central railroads, in violation of Section 2 of the Act, and in undue preference and prejudice as between origins in the Brazil and Linton districts, and as between the respective Indiana districts, in violation of Section 3(1) of the Act, and to the extent that such rates reflect or would reflect rate relations between such districts and between the points in each of such districts to the respective destinations which differ from the relations reflected by the rates and rate basis set forth as approved in this report including Appendixes A and D thereto.

In apt time the Coal Trade Association of Indiana, on behalf of its members, and the Milwaukee filed their respective petitions with the Commission for reopening, rehearing, reargument, and reconsideration of the report and order of the Commission of July 9, 1945, which petitions were denied by the Commission on November 13, 1945, and the effective date of its order postponed to January 21, 1946.

Plaintiffs in cause No. 1072 then filed their petition in this court, seeking to enjoin in whole or in part the order of the Commission of July 9, 1945, in said I. & S. Docket

5139. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in cause No. 1076, filed its petition seeking to enjoin the said order of the Commission. Said petitions were filed in District Court of United States for the Southern District of Indiana, Indianapolis Division, and a statutory court of three judges was called to hear same. By order of said court the petition of the Ayrshire Collieries Corporation, et al., No. 1072, and petition of Chicago, Milwaukee, St. Paul & Pacific Railroad Company, No. 1076, were consolidated for all purposes.

Hearing was had in said consolidated causes before a statutory court of three judges, at which hearing the complete record before the Commission, and certified copies of the suspended tariff schedules, were received in evidence. Findings of fact and conclusions of law were made and filed in which the court held that the Commission had acted within its authority and that its report and order were supported by adequate findings of fact, substantially supported by the record before the Commission, and afforded a rational basis for the conclusions of the Commission; that the plaintiffs were accorded a full and fair hearing by the Commission, and the record disclosed no error of law, and that the report and order of the Commission are lawful and valid in all respects, and entered a final decree on June 5, 1946, dismissing the petition of the Ayrshire Collieries Corporation, et al., and the petition of the Chicago, Milwaukee, St. Paul & Pacific Railway Company. Said findings of fact, conclusions of law and decree were filed in the District Court and entered on June 5, 1946. No opinion was rendered by the court. Due to illness of one of the members of said court, which occurred after the hearing, the causes were determined by, and the findings of fact, conclusions of law and the decree dismissing the two complaints, were made by, two members of the court.

Cases Sustaining Jurisdiction

Youngstown Sheet & Tube Company v. *U. S.*, 295 U. S. 476;

Western Paper Makers Chemical Company v. *U. S.*, 271 U. S. 268;

Skinner & Eddy Corporation v. *United States*, 249 U. S. 557;

United States v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 294 U. S. 499.

Grounds upon Which It Is Contended Questions Involved Are Substantial

The questions raised by the assignment of errors and here involved are substantial because they are of general public interest, as well as of great financial interest to the plaintiffs in both of these proceedings. It is believed that several of the questions have not been decided by the Supreme Court.

One of the questions involved is the power and authority of two judges of a statutory three-judge court, where, after the hearing before all three judges, one of them became ill and was unable to participate in the determination of the case to determine a case heard by the three judges, to enter findings of fact, conclusions of law and a final decree. This question, we believe, has not been decided by the Supreme Court.

Other questions involve the power and authority of the Interstate Commerce Commission in the proceedings and on the record before it to enter the order here sought to be enjoined. It is believed a number of these questions involving the power and authority of the Commission in a proceeding under Section 15(7) of the Interstate Commerce Act (28 U. S. C. A. 15(7)) have not been decided by the Supreme Court.

The question of whether the decision and order of the Interstate Commerce Commission is arbitrary and capricious is substantial, and especially so where such order materially and adversely affects the sale and transportation of hundreds of thousands of tons of coal annually from Indiana to an important section of Illinois, thus depriving the plaintiff coal of their ability to compete in the affected markets, and depriving the plaintiff railroad from transporting such coal as might be sold by the plaintiff coal operators.

EARL B. WILKINSON,
J. ALFRED MORAN,
Attorneys for Plaintiffs in Civil Action No. 1072.

CARSON L. TAYLOR,
WILLIAM L. HUNTER,
Attorneys for Plaintiff in Civil Action No. 1076.

DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF INDIANA,
INDIANAPOLIS DIVISION

Civil Action No. 1072

AYRSHIRE COLLIERIES CORPORATION, ET AL.,
Plaintiffs,

vs.

UNITED STATES,
Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants.

Civil Action No. 1076

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY,
Plaintiff,

vs.

UNITED STATES,
Defendant,

INTERSTATE COMMERCE COMMISSION, ET AL.,
Intervening Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled causes coming on for final hearing on the merits before this duly constituted three-judge court [1] on

---

[1] Judge Evan A. Evans became ill subsequent to the hearing of these causes and he is and has been unable to participate in a determination thereof. The findings of fact, conclusions of law and judgment have therefore been entered by the remaining judges of such court.

April 22, 1946, upon the pleadings, evidence, arguments and briefs of counsel for the respective parties, the Court makes and enters its findings of fact and conclusions of law as follows:

Findings of Fact

1. Each of the plaintiffs in the first of the above-entitled cases is now, and at all times hereinafter mentioned has been, a corporation duly organized and existing under the laws of one or more of the States of the United States, or an individual, and each of them now is, and at all times hereinafter mentioned has been, engaged in the operation of a coal mine or mines in the State of Indiana, except the plaintiff Coal Trade Association of Indiana, which is a voluntary association whose members are composed of the other plaintiffs in such action and certain other persons and corporations operating coal mines in Indiana.

2. The Chicago, Milwaukee, St. Paul & Pacific Railroad Company, plaintiff in the second of the above-entitled actions, is a corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and owns and operates lines of railroad in the States of Indiana, Illinois, Wisconsin, and certain other States, and is engaged in the transportation of property and persons for hire, both interstate and intrastate, as a common carrier by railroad, subject to the Interstate Commerce Act. It has its principal office at Chicago, Illinois.

3. Heretofore, on July 30, 1942, the Chicago, Milwaukee, St. Paul & Pacific Railroad Company and other carriers having filed with the Interstate Commerce Commission (hereafter called the Commission) certain tariffs containing schedules stating individual and joint rates and charges, and individual and joint regulations and practices affecting such rates and charges, governing the interstate transpor-

tation of coal from Illinois, Indiana, and western Kentucky, to Rockford and other destinations in northern Illinois, and to Beloit and other destinations in southern Wisconsin, the Commission, upon complaint of the plaintiff Coal Trade Association of Indiana, suspended the operation of said tariffs and entered upon an investigation as to the lawfulness of the rates, charges, regulations, and practices stated in those tariffs. This proceeding was designated by the Commission as *Investigation and Suspension Docket No. 5139, Coal to Beloit, Wisconsin and Northern Illinois.*

4. Heretofore, on September 9, 1942, a petition having been filed with the Commission, on behalf of the Alton Railroad Company and other common carriers by railroad operating in the State of Illinois, averring that the Illinois Commerce Commission required those carriers to maintain rates for application on coal moving by rail in intrastate commerce within the State of Illinois from producing points to Rockford, Freeport, Dixon and other destinations north and west of Chicago in Illinois, which were less than those on interstate traffic; and those railroads having alleged that the observance by them of the said intrastate rates caused and resulted in undue and unreasonable advantage, preference and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other, and undue, unreasonable and unjust discrimination against interstate commerce, the Commission entered upon an investigation as to the lawfulness of the said intrastate rates on coal. This investigation was designated by the Commission as *Docket No. 28881, Bituminous Coal Rates Within Illinois.*

5. As the rates involved in both proceedings related to the coal rate structure from Illinois, Indiana and western Kentucky, to northern Illinois and southern Wisconsin, the

two investigation proceedings were consolidated for hearing and were heard together before examiners of the Commission. Evidence was adduced before the Commission by the plaintiffs in the above-entitled actions and others bearing upon the lawfulness of all the rates contained in the schedules under investigation, all of which has been adduced before this Court. A report covering both proceedings was proposed by an examiner of the Commission and exceptions were filed thereto by certain parties to the proceedings. Thereafter, on July 9, 1945, the Commission made and entered its report and order covering both proceedings, which report appears in 263 I. C. C. 179. These actions were brought to set aside the Commission's report and order dated July 9, 1945.

6. The Commission found that the present and proposed rates of the railroads were unlawful in certain respects, as shown in the Commission's report dated July 9, 1945. Accordingly, pursuant to its authority under Section 15 of the Interstate Commerce Act, the Commission prescribed interstate and intrastate rates to be published and collected by the carriers for the transportation of coal between the points involved in such proceedings and fixed relationships between certain producing areas in Illinois, Indiana and western Kentucky in lieu of the existing and proposed rates and relationships as stated in the tariffs under investigation.

Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of these actions.

2. The Commission's report and order dated July 9, 1945, were made within its statutory authority and are supported by adequate findings of fact.

3. The findings of the Commission as set forth in the report and order of July 9, 1945, have substantial support in the record made before the Commission and afford a rational basis for its conclusions.

4. The plaintiffs were afforded a full and fair hearing before the Commission and the record made before the Commission discloses no error of law.

5. The Commission's report and order are lawful and valid in all respects.

6. The plaintiffs' complaints should be dismissed.

(Signed) J. EARL MAJOR,
United States Circuit Judge.
(Signed) MICHAEL L. IGOE,
United States District Judge.

Dated this 5th day of June, 1946.